the 2018 trial court "must examine the record of the prior proceeding" pursuant to state law in *State v. LoveJoy* 79 Ohio St. 3d 440; also pursuant to federal law requirements in *Lucas v. Hamilton County Mun. Court*, 2012 U.S. Dist. Lexis 76774 at [*29-*35]. State court appointed ineffective appellate counsel deficiencies has sponsored the state appeals court unreasonable determination in the their 26(B) determination whereas the state appeals court considers that Struckmans motion in limine direct appeal inclusion request to state court appointed appellate counsel was a "precautionary ruling on an anticipated evidentiary issue" by way of something the trial court need not even rule upon without any of the state courts fully and fairly reviewing the relevance of the prior "municipal cases" and the concentration of Struckman's arguments. The state courts 26(B) determination has overlooked the fact that the state trial courts re-litigated ultimate facts in evidence from the prior municipal cases over Struckman's objections (attach. G T.p. 525-592,746,747,1111-1482) and is a violation of Struckmans right to Const. V, XIV fair trial, *Ashe v. Swenson* 397 U.S. 444. The state appeals courts 26(B) determination is clearly an "unreasonable determination of the facts" pursuant to *Badelle v. Correll*, 452 F.3d 648, 654-655. Therefore, because the related prior municipal case issues were communicated through the motion in limine at the 2018 trial and the trial record contained the supporting "exhibit PG" of the "municipal case acquittal" in the 2018 trial exhibits (attach. A-5 at T.p.10), that said article of evidence in the 2018 trial has shown the failure by state court appointed appellate counsel to emphasize and prompt the state court of their required duty to review the prior municipal case acquittal which as a matter of fact proves "reasonable doubt exists", actual innocence and that Struckman was not the possessor of the premises. The state trial court and state appellate court have disregarded a "full and fair" review of the 2018 trial record

and has overlooked the "reasonable doubt" contained in the "municipal case, 2018 trial "exhibit PG" which has substantially outweighed the danger of unfair prejudice against Struckman. If state court appointed ineffective assistance of appellate counsel did not fail in his duty to fairly present the said claim in the state direct appeal work product there is a reasonable probability of success it advanced on appeal. The state court appointed appellate counsel ineffective assistance is a "manifest error" so serious it shows appellant was deprived of his Const. VI right to effective assistance of counsel. A "full and fair" review of the 2018 trial record will show the state appellate court unreasonable determination in their failure to notice Struckman had made timely objections to error" at the 2018 trial. Furthermore, the state court 26(B) determination is completely void of "grave due process concerns" citing *Dowling v. United States* 493 U.S.342 at 356-357. A "full and fair" review of the trial record will reveal that at the 2018 trial the states witness officer jones cumulatively and prejudicially responded to the state's evidence and state trial exhibits referencing the residence and the belongings as Struckman's and Struckman continually objected because of prejudicial concern to Struckman. In fact, collectively the state has been aware "con 'usant" of the "reasonable doubt" in the 2018 trial "exhibit PG" showing actual innocence since July 12, 2017 from direct nexus case C/15/CRB/10112 acquittal (attachment F). While in this 26(B) determination the state appeals court unquestionably evaded review of the related prior municipal case including the 2018 trial "exhibit PG" and case C/15/CRB/10112 and the state prosecutor continued to use their evidence, exhibits and statements in a prejudicial manner to collectively manipulate and elaborate a fiction of circumstantial evidence on all levels of review which the state collectively has always knew was false and misleading to the courts. Furthermore, the state courts 26(B)

determination does not appear to have executed a plain error analysis, if they had then a "full and fair" review of the municipal case communicated in the motion in limine would have allowed the state appeals court to observed the 2018 trial court "exhibit PG" element satisfying the material existence of "reasonable doubt" from the related prior municipal case, "exhibit PG" is located in the 2018 trial court exhibits, See attachment A-5 at T.p.10. Struckman requests this Federal court take into consideration that his failure to request a limiting instruction was impeded by the state trial court refusal to review the prior municipal case and is outweighed with the fact that the record shows the municipal case res-judicata issues were unreasonably made "moot" by the 2018 trial court, see attachment G transcripts T.p.88,89. The state court 26(B) determination has superficially reviewed the record and the 2018 trial court exhibits and in doing so has infringed on Struckmans Const. right to ensure a "full and fair" review which is required in order to complete the record on direct appeal through effective assistance of state court appointed appellate counsel, citing U.S. Const. Amend. VI, pursuant to *Strickland v. Washington,* 466 U.S. 668. Petitioner cites "actual innocence" pursuant to *Schlup v. Delo,* 513 U.S. 298 *Id., Herrera v. Collins,* 506 U.S. 390 *Id.,* and "miscarriage of justice" pursuant to *Wainwright v. Sykes,* 433 U.S. 72 *Id.*; *Murray v. Carrier*, 477 U.S. 478 *Id.*; *Edwards v. Carpenter,* 529 U.S. 446 *Id.*.

GROUND THREE: C-200210 (1) U.S. Constitution Amendment V, Requirement of Proof Beyond a Reasonable Doubt, Fair Trial, Plain Error, Fundamental Due Process, Fair Presentment. Ashe V. Swenson 397 u.s. 436. Brady V. Maryland 373 u.s. 83. U.S. Constitution XIV, Due Process, Fundamental Right. Ashe v Swenson 397 u.s. 436. Brady V. Maryland 373 u.s. 83.

C-200216 (1) Trial court erred in denial of Crim.R.33 Motion which put forth trial courts err in motion Limine, denial of objections by defense, courts failure to protect defendant's Constitutional rights to a fair trial, protect defendant from double jeopardy, prejudicial evidence.

(2) Prosecutorial misconduct, cumulative improper inferences prejudiced defendant to a fair trial, issues brought in defendants Crim.R.33.

C-220658 (1) Common pleas court unreasonably failed to fully and fairly review the unavoidable-prevention standard in their operative fact finding opportunity under Crim.R.33(B). (2) Common pleas court abused discretion in denying movants summary judgment and in failing to require respondent show excusable neglect under Civ.R.6(B). (3) Common pleas court adjudication was fundamental error and is contrary to Clearly Established Federal Law because it constitutes an unreasonable application in identification of the issues from the acquittal municipal case as it relates to this common pleas case.

Argument

C-200210

(1) U.S. Constitution Amendment V, Requirement of Proof Beyond a Reasonable Doubt, Fair Trial, Plain Error, Fundamental Due Process, Fair Presentment. Ashe V. Swenson 397 u.s. 436. Brady V. Maryland 373 u.s. 83. U.S. Constitution XIV, Due Process, Fundamental Right. Ashe v Swenson 397 u.s. 436. Brady V. Maryland 373 u.s. 83.

Before ever acquiring "attachment J" First Appellate District OPINION C-180287 *State v. Struckman* 2020 Ohio app. Lexis 1187 and learning of the factual predicate basis to determine the precise route of the jury's reasoning on which the verdict rested for the jury's 2018 decision, through perception after the fact in 2020 the attachment J was then able to show the relevance to "the probative value" of the prior municipal case C/15/CRB/10112 facts being "pertinent", relevant and material to "clarify relevant factual issues" at the 2018 trial. Petitioner attempted to raise the relevant issues at the 2018 trial but the state trial court pronounced the issues were "moot" see attachment G at T.p.89. Petitioner, *Pro se* has diligently argued with all other parts of the trial record one would conceive as necessary to a resolution. Petitioners intent on enacting due diligence through his patience and perseverance in demonstrating actual innocence is distinguishable by the August 21, 2018 filing in the state trial court with the Motion for leave Crim.R.33 which was denied on Sept 17, 2018. Petitioner from within a

controlled environment of state "prison" appealed to ohio first district court of appeals generating state appeal C-200210 which resulted in the states dismissal on March 31, 2021, see attachment B *State v. Struckman* 2021-Ohio-1043. The procedural default issues argument in petitioners Traverse pages 6-17 **GROUND THREE** expounds claim C-200210 with procedural exceptions, reasonable cause, and prejudice in the state courts "unreasonable determination" denying jurisdiction. Analysis of the record will show the appellee brief submitted by the state prosecutor had encouraged the state appeal court in their brief that Struckman's proposal in his notice of appeal "could be considered akin to a motion for leave to file a delayed appeal". Petitioner's intent and purpose to clarify relevant facts in the filed motion for leave Crim.R.33 put forth evidence outside the trial record showing actual innocence and reasonable doubt existed. The state court in denying leave unreasonably prohibited Struckman a vehicle to pursue justice with his evidence showing reasonable doubt and actual innocence. The state court denial determination is contrary to fair and balanced reasoning pursuant to *In Re Estate of Palley* 2006-Ohio-3528 whereas the state courts prior approach has been that it is preferable to hear cases on their merit rather than to dismiss for minor technicalities. The minor technicality causing dismissal in Struckmans case should have been considered minor because the state prosecutor settled the primary issue in stating in their appellee brief that the notice of appeal could be considered akin to a motion for leave to file a delayed appeal. The state appeal court C-200210 denial determination gave absolutely no consideration to the state prosecutor's encouragement to hear the claim on its merit. For the principal reason that "there is no major indication" Struckman was at fault for the said minor technicality this request for a "full and fair" Federal evidentiary review is internally consistent and ought to take place. Federal courts

are disposed to consider habeas petitions as "law and justice" require under 28 U.S.C. § 2243. Petitioner cites case law on equitable principles applied to 2254, pursuant to *Holland v. Florida*, 130 S.Ct. 2549, 2560, 2561 (2010) (equitable principles have traditionally governed the substantive law of habeas corpus); *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (Habeas corpus is governed by equitable principles); *Fay v. Noia*, 372 U.S. 391, 438 (1963); *Danforth v. Minnesota*, 552 U.S. 264, 278 (2008). What is more is that in the state prosecutor's development in its appellee brief they were aware about the prior municipal case C/15/CRB/10112 acquittal and trial "exhibit PG" submitted at the 2018 trial revealing that the state prosecutor response was an admission that they were aware the prior case had already undergone litigation in finding conclusions of ultimate fact showing reasonable doubt exists and actual innocence applies. The 2018 trial court exhibit PG in evidence (attachment A-5) assisted the record in efficiently reminding the state courts of its obligation to "be fair", and what is more in knowing of the said evidence the government "may not knowingly use false evidence" or "allow it to go uncorrected when it appears." pursuant to *Napue v. Illinois*, 360 U.S. 264,79 S.Ct.1173, 3 L.Ed.2d 1217 (1959) *Id.* at 269, furthermore the state court determination was unreasonable because it is contrary to state and federal law whereas "a state court must examine the record of the prior proceeding" pursuant to state law requirements in *State v. LoveJoy* 79 Ohio St. 3d 440; also pursuant to federal law requirements in *Lucas v. Hamilton County Mun. Court*, 2012 U.S. Dist. Lexis 76774 at [*29-*35]; A review of the state prosecutor brief shows their involvement in deceptive practice which is apparent by a "full and fair" merit review of the exculpatory evidence including the 2018 trial "exhibit PG" in evidence (attachment A-5) showing "reasonable doubt" exist as well as actual innocence from direct nexus case

(attachment F) C/15/CRB/10112, which the state has known since July 12,2017. Petitioner cites "actual innocence" pursuant to *Schlup v. Delo,* 513 U.S. 298 *Id., Herrera v. Collins,* 506 U.S. 390 *Id.,* and "miscarriage of justice" pursuant to *Wainwright v. Sykes,* 433 U.S. 72 *Id.*; *Murray v. Carrier*, 477 U.S. 478 *Id.*; *Edwards v. Carpenter,* 529 U.S. 446 *Id.*.

C-200216

(1) Trial court erred in denial of Crim.R.33 Motion which put forth trial courts err in motion Limine, denial of objections by defense, courts failure to protect defendant's Constitutional rights to a fair trial, protect defendant from double jeopardy, prejudicial evidence.

On Sept. 29, 2020 Struckman filed Motion for leave Crim.R.33 which was denied by the state trial court on Oct. 26, 2020. Struckman appealed to the Ohio first district court of appeals generating state appeal C-200216 which resulted in dismissal on June 17, 2021 see *State v. Struckman*, 1st Dist. Hamilton No. C-210216. While an attempt to reanimate the state appeal was stricken through an "unreasonable determination" by the state appeal court on Sep. 03, 2021, the procedural default issues argument in Struckmans Traverse pages 6-17 **GROUND THREE** claim C-200216 expounds procedural exceptions, reasonable cause and prejudice in the state appeal court "unreasonable determination" which denied jurisdiction. Petitioner asks this Federal Court to consider equitable principles to consider this claim as "law and justice" require under 28 U.S.C. § 2243. Petitioner cites case law on equitable principles applied to 2254, pursuant to *Holland v. Florida*, 130 S.Ct. 2549, 2560, 2561 (2010) (equitable principles have traditionally governed the substantive law of habeas corpus); *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (Habeas corpus is governed by equitable principles); *Fay v. Noia*, 372 U.S. 391, 438 (1963); *Danforth v. Minnesota*, 552 U.S. 264, 278 (2008). Furthermore, the said filed motion for leave Crim.R.33 in state appeal C-200216 put forth evidence outside the 2018 trial court record

showing reasonable doubt exist with exhibits such as states witness officer jones assault / injury incident number 2016000004390 attachment H. The facts outlined in the said record made clear the state omitted the required review of "relevant facts" in attachment H evidence which proves that other persons had dominion and control over the area, furthermore it is clear that at the 2018 trial the state witness officer jones falsified generating the assault injury report 2016000004390 attachment H or knowing about the assault injury report evidence at the 2018 trial see attachment G transcripts at T.p.769,771,780,781, thereby showing the assault injury report evidence attachment H was <u>withheld and suppressed</u> by the state at the 2018 trial and the issues were not "fully and fairly" adjudicated pursuant to 28 U.S.C. § 2254(e)(2); citing *Brady v. Maryland*, 373 U.S. 83 *Id.*. What is more in the said filed motion for leave Crim.R.33 is that petitioner attached photocopies of U.S. postal mail belonging to J.K. addressed to the house 622 maple where the dangerous ordnances were found and the U.S. mail was dated with relevant dates to fairly infer J.K. had dominion and control over the property at the time the dangerous ordnance was found, citing *Brady v. Maryland*, 373 U.S. 83 *Id.*. In addition, petitioner submitted photos of home squatters from parts of the acquitted case C/15/CRB/10112 also recognized at the 2018 trial court as "exhibit PG". Furthermore, as well petitioner submitted "attachment E" the affidavit administered on 4-20-15 showing the direct nexus between the cases and Struckman emphasized the said evidence is showing "reasonable doubt" which was submitted in the 2018 trial court through trial "exhibit PG" acquittal journal entry from case C/15/CRB/10112 while Struckman diligently reminded the state courts obligation to "be fair" and duty to review the said case pursuant to *Ashe v. Swenson,* 397 U.S. 436 *Id.*; *Napue v. Illinois*, 360 U.S. 264 *Id.; Kyles v. Whitley*, 514 U.S. 419, 441, *Id.; Brady v. Maryland*, 373 U.S. 83, *Id.*;

McCullough v. Cain, 2007 U.S. Dist. Lexis 95909 *Id.*; *United States v. Agurs*, 427 U.S. 97,103,96 S.Ct. 2392, 49 L.Ed.2d 342 (1976) at 103, 104,107; *State v. Hawkings*, 612 N.E. 2d 1227,1235(1993). A state court must examine the record of the prior proceeding" pursuant to state law requirements in *State v. LoveJoy* 79 Ohio St. 3d 440; also pursuant to federal law requirements in *Lucas v. Hamilton County Mun. Court*, 2012 U.S. Dist. Lexis 76774 at [*29-35]. In addition, the state appeal C-200216 Crim.R.33 evidence included attachment G transcripts which showed the states stipulations to negative gunshot residue tests performed on Struckman and testimonial facts from states witness officer jones during the 2018 trial showing squatter suspects other than Struckman running from the residence leading to the squatters being captured while being in possession of an additional firearm see attachment G at T.p.36, 42, 934-935. What is more, petitioner made the state appeal court aware in the state appeal C-200216 Crim.R.33 motion that the state prosecutor failed to provide the facts in evidence of a 911 call whereas W.B. and T.D. called 911 whereas W.B. stated he heard a gunshot and seen multiple individuals running through his yard which made him in fear for his life. All the said omitted facts in evidence materially affected Struckman from an opportunity to present a "full and fair" defense pursuant to *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991). Petitioner cites "actual innocence" pursuant to *Schlup v. Delo,* 513 U.S. 298 *Id., Herrera v. Collins,* 506 U.S. 390 *Id.,* and "miscarriage of justice" pursuant to *Wainwright v. Sykes,* 433 U.S. 72 *Id.*; *Murray v. Carrier*, 477 U.S. 478 *Id.*; *Edwards v. Carpenter,* 529 U.S. 446 *Id.*.

(2) Prosecutorial misconduct, cumulative improper inferences prejudiced defendant to a fair trial, issues brought in defendants Crim.R.33.

Of the many examples petitioner highlights in the 2018 trial record of the state prosecutor's cumulative misconduct petitioner concentrates the prosecutor's fixation with using the

material falsehood that "the state believes the suppressor was being used" see attachment G at T.p.1250. The state prosecutor knew very well states witness officer sublet (officer who wrote the warrant) stated on record in prior state proceedings that the (M-10) dangerous ordnances had no reasoning for the origin of the search warrant see attachment A-4 T.p.20. The state prosecutor also knew very well states witness officer jones testified in the 2018 trial "this weapon we do not, I do not believe it to be used in the offense" see attachment G at T.p.672. The state collectively knew very well the dangerous ordnances had never been used. Furthermore, the state collectively knew very well it cannot prove Struckman ever had actual possession "at some point" to have a valid claim the (M-10) dangerous ordnances was used. Furthermore, the state knew or should have known very well the bond forms No.11A,11B,12A,12B, aside from having incompetent signatures, have a direct nexus to the 2018 trial "exhibit PG" which is in fact the acquittal municipal case C/15/CRB/10112 attachment F and the state knew or should have known the said evidence is obviously "pertinent", relevant and material evidence which along with attachment E affidavit D110372440A administered on 4-20-15 manifest the point at which all cases originated. The state of ohio is clearly contrary to state and federal law requirements whereas "a state court must examine the record of the prior proceeding", specifically the prior acquittal case C/15/CRB/10112 "exhibit PG" pursuant to state law requirements in *State v. LoveJoy* 79 Ohio St. 3d 440; also pursuant to federal law requirements in *Lucas v. Hamilton County Mun. Court*, 2012 U.S. Dist. Lexis 76774 at [*29-*35]; *Ashe v. Swenson,* 397 U.S. 436 *Id.*; *Napue v. Illinois*, 360 U.S. 264 *Id.; Kyles v. Whitley*, 514 U.S. 419, 441, *Id.; Brady v. Maryland*, 373 U.S. 83. The state omitting the aforesaid facts from trial prevented facts from direct appeal pursuant to *State v. Leyh* 166 Ohio St. 3d 365 *Id.*. The state

prosecutor should not have continued to present their case with a deceptive strategy throughout the 2018 trial in violating inference stacking rules by drawing inferences from false testimonial evidence which created false presumptions pursuant to *State v. Armstrong*, 2016-Ohio-7841 at ¶28. The state prosecutor has knowingly coordinated their deceptive prosecution in violation of Struckman's Const. V, XIV rights while infringing upon the United States government pursuant to U.S. Constitutional Amendment V, XIV, double jeopardy, due process.

C-220658

(1) Common pleas court unreasonably failed to fully and fairly review the unavoidable-prevention standard in their operative fact finding opportunity under Crim.R.33(B).

On Oct.05, 2022 Struckman filed new evidence Motion for leave Crim.R.33 which was denied by the state trial court on Dec.12, 2022. Struckman appealed to Ohio first district court of appeals generating state appeal C-220658 which resulted in dismissal on Oct.04, 2023, the said dimissal appeared to partially review merit without a full evidentiary hearing. The filed Motion for leave Crim.R.33 state appeal C-220658 had put forward "new evidence" being attach. J as a factual predicate that could not have been previously discovered through the exercise of due diligence. The 2020 newly generated factual predicate attach. J brought forth internally consistent evidence outside the 2018 trial record that established a demonstration by clear and convincing evidence a solid foundation along with other interconnected, relevant and internally consistent actual innocence evidence that was all together prevented from a prior "full and fair" review at the 2018 trial. The state courts have all together failed to "fully and fairly" review the 2020 determination attach. J as being a newly originated factual predicate distinguishable as "new

evidence" with the unavoidable-prevention standard under Crim.33 which required the state courts to determine whether leave to file a new trial was warranted with the 2020 newly generated factual predicate attach. J. The state prosecutor memorandum clearly reveals that it did not attempt to contend whether leave was warranted for attach. J as a "newly generated factual predicate". The state court denied jurisdiction, see attach. C at {¶9}, *State v. Struckman* 2023-Ohio-3582, whereas the state courts dissatisfaction by way of "exhibit J" presumed "this is not "new evidence"", "he was aware of the facts noted in the opinion" "he was aware of the grounds" "within the 120-time period", the state cited *State v. Risden*, 2013-Ohio-1823 at ¶13" as their legal grounds for their unreasonable determination. The state appeal court has made an "unreasonable determination of the facts" pursuant to *Badelle v. Correll*, 452 F.3d 648 *Id.*, because in fact the said 2020 judgment attach. J did establish a newly generated factual predicate contained therein which was not available at the 2018 trial and attach. J "exhibit J" "judgment is evidence" pursuant to *Sutter v. Hill* 1950 Ohio App. Lexis 719 (syllabus); *Chase v. Curtis* 113 U.S. 452 at (****9); *In Re Dickman: Allison v. Allison,* 81 Ohio App. 281 at ** 174, HN1. Attach. J "exhibit J" factual predicate evidence is considered evidence because "judgment is evidence" of its rendition pursuant to *Hanson v. Lessee of Eustace* 43 U.S. 653 at (***79); also "judgment is evidence" pursuant to *Badgely v. Badgely* 1877 Ohio Misc. Lexis 34 at Headnotes/Summary. A "factual predicate of * habeas claim is the state courts journal entry" pursuant to *Aquila v. Eppinger* 2019 U.S. Dist. Lexis 142066 at (*12), and (*14). Additionally, the "factual predicate became known when Struckman 'received the journal entry'" pursuant to *Hackett v. Bradshaw* 2012 U.S. Dist. Lexis 184587 at (*20). The "necessary factual predicate for Struckmans habeas ground for relief would be the court of appeals denial" pursuant to *Floyd v.*

Forshey 2023 U.S. Dist. Lexis 113411 at (*23). Pursuant to *Crangle v. Kelly* 838 F.3d 673 at (***11) and (*681) "the order is a factual predicate" and *Johnson v. United States* 544 U.S. 295 interpretation of 2244(d)(1)(D) established that a state-court decision can qualify as a fact. Citing *Crangle v. Kelly* 838 F.3d 673 at (**19) thru (**22) "bringing the proceedings petitioner causes the factual predicate event to occur, any court order a petitioner generates may potentially qualify, "state-court decision can qualify as a fact". Moreover, the states adverse assessment of attach. J "exhibit J" failed to notice the 2018 trial court erred mooting the issues from attach. F (see attach.G T.p. 89), and in 2020 attach. J generated availability to tangibly prove Const. plain "trial error", an oversight, an "unreasonable determination" and a miscarriage of justice citing *Wainwright v. Sykes,* 433 U.S. 72 *Id.*; *Murray v. Carrier*, 477 U.S. 478 *Id.*; *Edwards v. Carpenter,* 529 U.S. 446 *Id..*, and because the attach. J was newly generated in 2020 it then produced new available vital factual predicate evidence submitted in support of the basis for motion for leave and is internally consistent, consistent with attach. F and attach. H in petitioners long standing claim of innocence, and consistent with being available "physical and tangible" evidence which proved in 2020 the factual predicate of Const. violations that had occurred at the 2018 trial when the state trial court unreasonably determined the municipal res-judicata issues "moot" see attach. G at T.p.88-518. The said U.S. Const. violations have infringed upon the U.S. government pursuant to U.S. Const. Amend. V, XIV double jeopardy, due process, fair trial. Furthermore, the state appeal court opinion portrays "wrong impressions" which cover-up the fact marijuana was found in the same area as the safe containing dangerous ordnances and the facts have already been litigated Struckman did not live in that area and the states opinion is unable to illustrate "how" an unbeknown locked

closet or marijuana indefinitely found on a table surmounts the assault by several males in attach. H or actual innocence in attach. F. The states error had a "substantial and injurious effect" on the jury's verdict, *Brecht v. Abrahamson*, 507 U.S. 619,623,113 S.Ct. 1710, 123 L.Ed.2d 353, "requiring a *de novo* examination of the record as a whole". The state bar is not independent and failed to determine whether federal const. error such as const. plain trial error and/or *Brady Giglio* error has been committed citing *Were v. Bobby*, 2024 U.S. Dist. Lexis 25782 *Id.* at *6. Denying jurisdiction has prevented a "full and fair" defense opportunity for the ascertainment of truth citing *Arizona v. Fulminante*, 499 U.S. 279 *Id.* and also prevented a "full and fair" review to correct the 2018 state trial courts const. plain trial error with evidence that satisfies "actual innocence", *Schlup v. Delo,* 513 U.S. 298 *Id., Herrera v. Collins,* 506 U.S. 390 *Id.,* and "miscarriage of justice" citing *Wainwright v. Sykes,* 433 U.S. 72 *Id.*; *Murray v. Carrier*, 477 U.S. 478 *Id.*; *Edwards v. Carpenter,* 529 U.S. 446. There is a 'reasonable probability' that "full and fair" review of attach. J, attach. F, and attach. H evidence collectively clearly and convincingly proves it is sufficient to undermine confidence in the outcome of the proceedings citing *United States v. Bagley*, 473 U.S. 667, 682,87 L.Ed. 2d 481,105 S.Ct. 3375.

(2) Common pleas court abused discretion in denying movants summary judgment and in failing to require respondent show excusable neglect under Civ.R.6(B).

The state trial court unreasonably failed to allow movant seven days to respond under Civ.R.6(c)(1), moreover the state trial court prejudicially failed to preclude prosecutor's untimely filings under Crim.R.45(B). The state courts unfairness is obvious when all together evaluating the issue of "bias and prejudice" which is presented for review whereas the state appeals court prejudicially failed to preclude the prosecutor's untimely filings under Crim.R.45(B) when the state prosecutor failed to demonstrate their state office was unavoidably prevented from timely filing pursuant to Civ.R.6(c)(1). The state appeals court bias is evident by its partiality in removing the state prosecutors time constraints which makes a

clearly well-argued example of who the state appeal court prejudicially preferred to present their filing even though it was untimely. The state prosecutor gave clear admission that the Oct. fifth filing deadline escaped his attention and that said admission is sufficient to disqualify the state prosecutors brief as being untimely filed and it is obvious the state appeals court showed prejudicial support to the state prosecutor by their indulgence in preferential favor of the state prosecutors case which infringed on the separation of powers doctrine citing the U.S. Const. X, because the state appeals courts action was arbitrarily intended to sponsor state prosecution with untimely filings while prejudicially denying appellant jurisdiction to review merit.

(3) Common pleas court adjudication was fundamental error and is contrary to clearly established federal law because it constitutes an unreasonable application in identification of the issues from the acquittal municipal case as it relates to this common pleas case.

The state prosecutor has deliberately misrepresented guilt to the 2018 trial court jury while knowingly allowing false evidence to go uncorrected. The state government "may not knowingly use false evidence" or "allow it to go uncorrected when it appears" and the state prosecutor violations by their knowing reliance of state witness officer jones false testimony allowed a level of prejudice that is "exemplified" pursuant to *Giglio v. United States* 405 U.S. 150 relying on *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217, a *Giglio* violation is where prosecution relied on false testimony and it knew or should have known that the testimony was false. Furthermore, citing *United States v. Agurs*, 427 U.S. 97 *Id.* at 103, whereas the Federal Court sets forth the materiality standard for determining whether a new trial is required under *Brady v. Maryland*, 373 U.S. 83 *Id.*. In Struckmans case the state prosecutor knowingly solicited false evidence through testimony of states witness officer jones in violation of Const. Amend. V, XIV, due process and a fair trial pursuant to *Workman v. Bell* 178 F.3d 759.

Furthermore, the state prosecutor knew attach. J is indeed evidence produced on 3-31-2020 by written order of the state appeals court in proceedings with the expression by state appeal judges of the reason for their determination which affirms that "Struckman was the only person who exercised dominion and control over the area" in attach. J at *p17 and in attach. J at *p14 affirms that "officers had never seen anyone else at the house". Both said false statements by the state appeals court show the vital Const. factual predicate grounds upon which Struckmans rights can tangibly be proven to have been violated. In consideration, because Struckman was combating the aforementioned falsehood through new vital evidence attach. J he had reason to request vital attach. F evidence case C/15/CRB/10112 acquittal showing actual innocence become part of the 2018 trial record and be reviewed pursuant to state courts required duty in *State v. LoveJoy* 79 Ohio St. 3d 440; also federal law requirements in *Lucas v. Hamilton County Mun. Court*, 2012 U.S. Dist. Lexis 76774 at [*29-35]; *Ashe v. Swenson* 397 U.S. 444 *Id.*; *Napue v. Illinois*, 360 U.S. 264,*Id. Kyles v. Whitley*, 514 U.S. 419, *Id., Brady v. Maryland*, 373 U.S. 83,*Id.*. The state omitting vital facts from the record prevented review on state direct appeal pursuant to *State v. Leyh* 166 Ohio St. 3d 365 *Id.*. The said attach. F proves the ultimate facts had already been litigated that "Struckman did not live at the residence" ,"photos of multiple suspect individuals inside the house", and "reasonable doubt" exist with showing of actual innocence. It is well settled in federal law that once an ultimate fact has once been litigated in a prior related proceeding it cannot again be re-litigated, collateral estoppel bans re-litigation, therefore the state is contrary to clearly established federal law pursuant to *Lucas v. Hamilton County Mun. Court*, 2012 U.S. Dist. Lexis 76774 at *p21-23, furthermore the state courts determination was unreasonable because it is contrary to state law whereas "a state court must examine the

record of the prior proceeding" pursuant to state law requirements in *State v. LoveJoy* 79 Ohio St. 3d 440. The aforesaid tends to prove that the state trial court jury decision was on an improper basis for a jury decision pursuant to *State v. McCoy* 2020-Ohio-1083 at HN9. Indisputably, Struckman had a U.S. Constitutional V, XIV right to due process and a fair trial at the dangerous ordnance trial in May 2018 not to be held in double jeopardy "res-judicata" however the 2018 state trial court infringed on the U.S. Constitution V, XIV and violated Struckmans right to a fair trial, this is proven in the 2018 state trial court record, see attachment G transcripts at T.p.88,89,412,458,462,466. The 2018 state trial court has committed Constitutional plain trial error by denial of the ascertainment of truth pursuant to *Arizona v. Fulminante* 499 U.S. 279, 310 (1991) and *State v. Rodgers* 2013-Ohio-3235 at *p51. On collateral review, the petition shows that, in light of the record as a whole, the error had a "substantial and injurious effect" on the jury's verdict. *Brecht v. Abrahamson*, 507 U.S. 619,623,113 S.Ct. 1710, 123 L.Ed.2d 353 (1993) ("*Brecht* clearly requires a reviewing court to make a *de novo* examination of the record as a whole"), citing *Brecht v. Abrahamson*, 507 U.S. 619 at 638. The state prosecutor knowingly allowing false evidence to go uncorrected directly affected the verdict because it prevented the opportunity for a fair trial. The aforementioned argument satisfies that the 2018 state trial court determination was an "unreasonable determination" and infringed on the U.S. Constitution V, XIV, and in addition the said state appeal court determination is contrary to clearly established federal law in violation of U.S. Constitution V, XIV, due process, fair trial which constitutes the "substantial and injurious effect" supporting habeas relief. *Brecht v. Abrahamson*,507 U.S. 619. Petitioner cites "actual innocence" pursuant to *Schlup v. Delo,* 513 U.S. 298 *Id., Herrera v. Collins,* 506 U.S. 390 *Id.,* and

"miscarriage of justice" pursuant to *Wainwright v. Sykes,* 433 U.S. 72 *Id.*; *Murray v. Carrier*, 477 U.S. 478 *Id.*; *Edwards v. Carpenter,* 529 U.S. 446 *Id.*.

GROUND FOUR: C-200069 (1) The Courts judgment was the result of an unfair trial. (2) The ineffective assistance of counsel Craig Newburger resulted in an unfair trial. (3) The ineffective assistance failure to raise a claim by counsel Bradly Hoyt resulted in an unfair trial. (4) The defendant was denied equal protections and due process as guaranteed by the Ohio Constitution and the Constitution of the United States.
C-210640 (1) U.S. Constitution Amendment V, Reasonable Doubt, Fair Trial, Plain Error, Due Process, Double Jeopardy. U.S. Constitution Amendment XIV, Due Process, Fundamental Right, Equal Protections, Miscarriage of Justice, Brady v Maryland 373 u.s.83.

Argument

C-200069

(1) The Courts judgment was the result of an unfair trial.

On November 18-22, 2019 Struckman filed a Petition to Vacate or Set Aside Judgment of Conviction which was denied by the state trial court on Dec. 10, 2019. Struckman appealed to Ohio first district court of appeals generating state appeal C-200069 which resulted in a denial entry on March 31, 2021 see attachment B *State v. Struckman* 2021-Ohio-1043. The state appeals court said denial entry determination was approximately two months after the state appeal court Feb 03 2021 denial determination of Struckman's 26(B) application for reopening attach. A. Attach. A-7 docket summary shows state appeal C-200069 was timely filed in state appeals court on 5-8-2020 while the docket summary does not show when the 26(B) was filed or when it was determined although the 26(B) determination states it was timely filed which means within the proximate timetable of 3-31-20 when attach. J *State v. Struckman,* 2020 Ohio App. Lexis 1187 was determined. The period of time from filing appeal C-200069 took

approximately 11 months to generate appeal C-200069 determination, while contained in that said timeframe the state appeals court took approximately 8 months to generate the 26(B) determination. The docket summary reveals that appeal C-200069 was unfairly put to one side in a dilatory tactic and by doing so the state appeals court predisposed its full attention on the 26(B) causing preconception by making appeal C-200069 determination subject upon the 26(B) application to reopen C-180287 denial determination. The state appeals courts modus operandi managed a finding of no merit to any aspect of the appeal C-200069 challenges and overruled all the assignments of error. The state appeal court took forward the opportunity to duplicate the misrepresentation of errant facts from their 26(B) determination which is a product from the unreasonable determination from state appeal C-180287 *State v. Struckman,* 2020 Ohio App. Lexis 1187, attachment J at {¶14} and {¶17}, the state once again drafted serious factual errors "errant facts" by copy-and-pasting the wrong information into the draft of the state appeal court C-200069 determination creating an additional layer of hazardous presumptions in the state appeal court factual determinations therefore petitioner again cites

> *McCarthy v. Pollard*, 656 F.3d 478 (2011), whereas, we review the district court's factual determinations for clear error, and we presume that the state court's factual determinations are correct unless the petitioner can demonstrate by clear and convincing evidence that they were unreasonable.

Before state appeal C-200069 determination was produced on 3-31-21 the attachment A 26(B) generated comments in its 2-3-21 determination on page 7 stating that "appellate counsel's

statement of the facts, however "errant", cannot be said to have prejudiced Struckman". In application to this state appeal C-200069 determination the 26(B) determination has sequentially preconceived appeal C-200069 determination facts by re-incorporation of the same errant facts for a second time thereby duplicating the prejudice of errant facts in the draft from the state appeal court's C-180287 "unreasonable determination" which has now reproduced and accumulated a false and bias impression in appeal C-200069 that "statement of facts, claiming that however "errant", cannot be said to have prejudiced". All in tandem collectively the state appeal C-200069 denial determination is plainly unreasonable because its's mismanagement generates misunderstanding of the circumstances and refusal of the state to collectively "clarify relevant facts" and "fully and fairly" review all the evidence.

> *Sandoval v. United States*, 574 F.3d 847, 850 (2009), whereas, we review the district court's denial of a petition for a writ of habeas corpus under 2255 *de novo* as to legal questions and for clear error as to factual questions.

Petitioners grounds of judicial bias, misconduct and alleged deprivations of rights by an infringement of Const. rights in the state proceedings were advanced through this state appeal C-200069 petition with supporting case files and records which showed "substantial grounds for relief" pursuant to R.C.2953.21(C). The said evidence "outside the record" consist in the form of the state trial court email and evidence of the state court appointed appellate counsel tangible correspondence letters. In attachment B, state appeal C-200069, the state gave admission that the evidence to support the claim of judicial bias and misconduct is "outside of the record" in the form of a state trial court email submitted as evidence that Struckman can fairly assert "sets

an off record stage" requiring a fair level of review whereas it is detectable in the record the 2018 state trial court unfairly worked together to compel Struckman to continue representing himself *pro-se*, see attachment B at {¶37}. *State v. Struckman* 2021-Ohio-1043. Furthermore, this judicial bias claim in this state appeal C-200069 argument is conjointly related to Struckman's argument in "**GROUND ONE:** (2) Mr. Struckman was deprived of his right to counsel under Sixth Amendment to the United States Constitution when his request for counsel during trial was denied.". Even so this Const. claim is framed as a self-standing claim in "**GROUND FOUR:** C-200069 (1) The Courts judgment was the result of an unfair trial, whereas this Const. claim C-200069 had attained its own right not to be waived pursuant to *State v. LaMar*, 2002-Ohio-2128 at **p35. A "full and fair" well-organized review of both the said claims in the said grounds shall assist this court to apprehend insight while the claims stand separately. This court is requested to notice the irregularities by the state trial court including state court appointed counsel conduct which occurred in the 2018 trial court proceedings. The state courts said C-200069 determination is unreasonable because it fails to discern that the 2018 state trial court judicial bias conduct did not only affect Struckman's U.S. Const. VI right to effective assistance of counsel but what is more the judicial bias by the state trial court also had an effect on Struckmans *pro se* defense contrary to the U.S. Const. V, XIV, fair trial, due process. In the context of this standing claim of judicial bias the state appeals court determination in attachment B at {¶39} state appeal C-200069, *State v. Struckman* 2021-Ohio-1043 *Id.* is "clearly erroneous" because the state appeal court misrepresents the fact in the appeal C-200069 determination that the initial 2018 trial court hearing was on Friday, 4-27-18 (see attach. G T.p. 999-1003) whereas "full counsel" was granted, and the state appeals courts determination has

omitted the facts from the "record" that after that said point Friday 4-27-18 when Struckman was dismissed by the state trial court and Struckman left the court room became the state trial courts "collaborated off record" resolution with Struckman's state court appointed counsel in effort to take away Struckman's "full counsel" that the state trial court had already granted, contrary to Const. VI. The fact is that after the state trial court granted counsel it then moved "off record", dismissed Struckman from the proceedings and made an "off record" scheme with Struckman's "full counsel", contrary to Const. V, VI, XIV, the state trial court unfairly functioned to take "full counsel" away. See attachment J at {¶34-37}, C-180287, *State v. Struckman* 2020 Ohio App. Lexis 1187, which proves the state appeal court said determination is clearly erroneous because attachment B at {¶39} state appeal C-200069 determination shows that specific important facts have been omitted about what led up to the "trial courts email ***, outlining the procedure for addressing the request that "full counsel" take over the defense" which arbitrarily overlooked specific important facts contrary to Const. V, XIV, due process citing *Blakemore v. Blakemore*, 5 Ohio St. 3d 217, 219, 481,450 N.E.2d 1140. Furthermore, the state appeal court never considered an evidentiary hearing to resurrect and embody specific important facts surrounding the leading "off record" email evidence and question what correctly occurred at the "off record" proceedings before opining about Struckman's Friday 4-27-18 counsel request in their state appeal court C-200069 determination attachment B. A "full and fair" review will show under the accurate fact that Struckman's request for "full counsel" was already confirmed granted on Friday, April 27, 2018. Furthermore, the First Appellate District state court determination in state appeal C-200069 attachment B arbitrarily presumes that the state trial court email shows the state trial court had been committed to

complying with the waiver requirement but in fact in contrast through reflection the state trial court record proves on Monday April 30, 2018 that the state appeal court determination C-200069 is an arbitrary and incorrect presumption which "omits the correct fact" and confuses understanding in the context surrounding everything that happened on Friday, 4-27-2018 in the state trial court record whereas standby counsel took over as "full counsel" to represent Struckman and the determination C-200069 confuses the fact as to what accurately happened surrounding the "outside the record" proceedings. It is important to notice attachment G at T.p. 1004, Monday 4-30-18 whereas the state trial court record states Mr. Newburger advised us that he was not able to take over your defense. This is another fact that is clearly contrary to the state trial court "off record" email directive sent to Mr. Newburger on Saturday 4-28-18 whereas the state trial court states in a controlling and autonomous manner "I will state for the record that Mr. Struckman has requested that you take over his defense for the remainder of the trial and that you have advised the court you're not able to do so". That said state trial court statement is in fact leading evidence showing an unreasonable and arbitrary statement contrary to a Const. V fair trial, citing *Blakemore v. Blakemore*, 5 Ohio St. 3d 217 *Id*. The state trial court "off record" email never disclosed the transcript purchase specifics or surrounding omitted facts about that critical stage in the proceedings on Friday 4-27-18 whereas the "off record" proceedings took place between Struckman's "full counsel" and the state trial court resulting to function in an "off record" prejudicial scheme between the state trial court and "full counsel" whereas the state trial court purchased the trial transcripts "off record" creating obstruction for their projected *pro-se* arrangement. The said arrangement by the state trial court infringed upon the U.S. Const. V, XIV, right to "fair presentment" and caused Struckman's

pro se defense to be impossible to present and prejudiced pursuant to *Verdin v. O'Leary*, 972 F.2d 1467 (1992). The Monday 4-30-18 trial record in fact shows state court appointed ineffective assistance of counsel as "full counsel" breakdown of communication consisting of handing Struckman two copies of a final transcript in opposition, see attachment G at T.p.1009, obtained from an ineffective counsels "off record" transcript proceedings, and in fact the trial court made Struckman powerless to go over the entire transcripts because he was not given opportunity by the state trial court to "fully and fairly" go over the transcripts due to state court appointed "full counsel's" serious disagreements (attach. G T.p. 1015) which transpired as being ineffective in assistance of counsel. Furthermore, in fact Struckman was required by the state trial court to move forward with limited capabilities and an inability to competently confer with counsel. The state trial court pressured Struckman about the high risk of appointing effective assistance of counsel and how unreasonable timing affects state court appointment of counsel see attachment G at T.p.1021. The state trial court then overstretched the incompetent and incapable Struckman rushing him to finish up his case stating "once we start tomorrow morning we're going to continue until we're finished" see attachment G at T.p.1023, meaning Struckmans closing argument must already be prepared. The aforesaid recorded facts show Struckman was placed under constraint in a position making him powerless to dispense with the trial transcripts or his attorney and Struckmans application of the purchased trial transcripts during the 2018 trial is in fact "sufficient indicia" of his incompetent lack of ability in that he was not knowingly and voluntarily waiving his right to dispense with a competent lawyer's strategy which is contrary to law pursuant to *US v. Chischilly* 30 F.3d 1144. Furthermore, the 2018 state trial court records omission of the "off record" surrounding facts concerning the trial court

email and the impact of the "off record" transcript purchase procedure that took place after the awkward Friday 4-27-18 proceeding which granted Struckman state court appointed full counsel, in fact, became an irregular and unfair trial when the state trial court functioned off the record to "take counsel away" and that said action became an infringement on the U.S. Const. and in violation of Struckman's U.S. Const. V, VI, XIV Amend. right to counsel, due process and a fair trial. The 2018 trial court actions were unreasonable, arbitrary, or unconscionable and contrary to law pursuant to *Blakemore v. Blakemore*, 5 Ohio St. 3d 217, therefore, the courts judgment was the result of an unfair trial.

(2) The ineffective assistance of counsel Craig Newburger resulted in an unfair trial.

The aforesaid result of an unfair proceeding as it happened in the 2018 trial was made possible in part by "full counsel's" defective representation which began on Friday, April 27, 2018. The record shows Struckman's state court appointed "full counsel" in opposition to Struckman's defense attained guidance and support through the state trial courts action purchasing transcripts for Struckman's state court appointed "full counsel's" defense prior to deserting the defense strategy. After state court appointed "full counsel" having the transcript purchase completed state court appointed "full counsel" then absconded from an incompetent Struckman's defense thereby infringing on the U.S. Const.VI in violation of Struckman's right to rely on the effective assistance of counsel, citing *U.S. v. Rezin* 322 F.3d 443 at HN5 whereas the spectrum of counsels legitimate tactical choices does not include abandoning a client's only defense. Struckman's state court appointed "full counsel" through evidence of an "off record" email from the 2018 state trial court became "not able" meaning incompetent to his previous approach of defense and as ineffective representation functioned together "off

record" with the 2018 state trial court compromising Struckman's defense by agreeing with the state trial court to comply with the 2018 state trial courts "off record" email directive for him to stand down as counsel. The state trial courts determination in attachment B at {¶27} *State v. Struckman* 2021-Ohio-1043, asserts that "Struckman did not support this claim with evidence outside the record", the aforesaid is proven to be a misrepresentation by the additional fact in determination attachment B at {¶37} *State v. Struckman* 2021-Ohio-1043, whereas in fact states that "Struckman supported those claims with outside evidence in the form of an email". The leading evidence to support the Const. VI claim of ineffective assistance of counsel is in fact "outside of the record" in the form of an email from the state trial court that Struckman asserts shows state court appointed counsel was advised by the state trial court that state court appointed counsel was "not able" meaning incompetent to provide effective assistance of counsel. The "off record" state trial court email evidence attached to the petition makes clear the state trial court decided that state court appointed counsel was incompetent pursuant to *Merriam-Webster*, 2024 dictionary because incompetent is defined in law as "not able to take part in a trial". The state trial court specified in their "off record" email while grooming the record that "Struckman requested that you take over his defense for the remainder of the trial and that you have advised the court that you are not able to do so". That said statement establishes the right to Struckman's ineffective assistance of counsel claim because the state trial court validated that state court appointed counsel was "not able" which "fell below an objective standard of reasonableness", confirmed by the trial courts statement in the "off record" state trial court email, state court appointed counsel's incompetent deficient performance thereby prejudiced defendant" pursuant to *Strickland v. Washington*, 466 U.S.

668, 80 L.Ed. 2d 674, 104 S.Ct. 2052, *Id.* at 688,694. Furthermore, the record shows the state trial court overlooked obtaining a statement from the state court appointed "not able" and incompetent counsel on the record to suggest otherwise as to why exactly state court appointed counsel could not take over the defense (see attach. G T.p. 999-1037). Therefore, it is reasonable and appropriate to apply that state court appointed counsel was ineffective by incompetence. Furthermore, the Monday 4-30-18 record supports proof that trial counsel ineffective assistance was due to an incompetent "not able" state court appointed counsel through the record showing a breakdown of communication consisting of handing Struckman two copies of a final transcript see attachment G at T.p.1009 which was derived from a "not able" incompetent state court appointed counsels off record hearing whereas transcripts were purchased. Furthermore, Struckman, *pro se*, was unable to go over the entire transcripts because he was not given ample opportunity to "fully and fairly" go over the transcripts due to a "not able" incompetent state court appointed "full counsel's" serious disagreements (attach. G at T.p. 1015) in opposition proving state court appointed counsel as being ineffective counsel. Consequently, the state trial courts determination in attachment B at {¶40}, *State v Struckman* 2021-Ohio-1043 asserts the state trial court specified "the email was merely cumulative of the evidence of record, its submission did not preclude the common pleas court from applying the doctrine of res judicata". The said statement by the state appeals court is in error because the state trial court email evidence was indeed "outside the record" which confined the evidence and the ineffective assistance of counsel claim underlying the evidence to post-conviction proceedings which is separate and distinct from the direct appeal Crim.R.44 claim. The state appeal court has improperly applied res judicata in this post-conviction claim in state appeal C-

200069 to deny Struckman's claim alleging the said leading "off record" email evidence and surrounding incidental facts could have been reviewed on state direct appeal. *Brecht* Standard for Collateral Review On collateral review, the petition must that, in light of the record as a whole, show the error had a "substantial and injurious effect" on the jury's verdict. *Brecht v. Abrahamson*, 507 U.S. 619,623,113 S.Ct. 1710, 123 L.Ed.2d 353 (1993) ("*Brecht* clearly requires a reviewing court to make a *de novo* examination of the record as a whole"). The state trial courts determination denying post-conviction review of the aforesaid claims directly affected the verdict because it prevented the opportunity for a "full and fair" defense and prevented opportunity for the ascertainment of truth pursuant to *Arizona v. Fulminante* 499 U.S. 279 *Id.* for a "full and fair" review because the aforesaid ineffective assistance argument with attached "outside the record" email evidence and omitted surrounding trial court facts likely satisfies that a manifest miscarriage of justice has occurred pursuant to *Wainwright v. Sykes,* 433 U.S. 72 *Id.*; *Murray v. Carrier*, 477 U.S. 478 *Id.*; *Edwards v. Carpenter,* 529 U.S. 446 *Id.*. There is a 'reasonable probability' that "full and fair" review of the aforesaid leading evidence and incidental facts will prove the irregularities in the proceedings involving Const. VI ineffective assistance of counsel and is sufficient to undermine confidence in the outcome of the proceedings, citing *United States v. Bagley*, 473 U.S. 667, 682, 87 L.Ed. 2d 481, 105 S.Ct. 3375.

(3) The ineffective assistance failure to raise a claim by counsel Bradly Hoyt resulted in an unfair trial. After the fact of the state appeal courts Feb 03 2021 denial of Struckman's 26(B) application for reopening, attachment A, progressed this state appeal C-200069 denial entry on March 31, 2021, attachment B, *State v Struckman* 2021-Ohio-1043 and thereby confronted the motion to suppress facts in the states prior 26(B) "unreasonable determination". Hypothetically

the two state appeal court determinations are comparatively different even though both determinations are founded from U.S. Const. IV motion to suppress claims. Although the record shows the state trial court authorized standing to contest the warrant to search and found the warrant valid, the 2018 state trial court proceedings make clear that the evidence tends to establish Struckman was not living at the address, see attachment G at T.p.513,515. To clarify the relevant facts, the state appeals 26(B) motion to suppress claim is mainly the "particularity clause" while this state appeal C-200069 motion to suppress claim applies to the "veracity". Both state appeal court judgements reflect determinations relevant to the same search warrant affidavit probable cause, both state appeal court "unreasonable determinations" show prejudice by the state appeal court not taking into account the lack of "fair probability" revealed by suppression hearing testimony attach. A-4 at T.p.20 which "clarifies the relevant fact" showing that state witness officer sublet who generated the warrant testify that the M-10 dangerous ordnances had no reasoning for the origin of the search warrant. Furthermore, if the state appeal court had in fact performed a "full and fair" review of the record then the state appeal court ought to have been aware that the suppression hearing testimony in attach. A-4 at T.p.20 evidence can be viewed collectively with state court appointed direct appeal counsel statements in his legal letters making obvious the "fair probability" in the "veracity" of the warrants probable cause was "on its face" defective and the illegal search and seizure Const. IV claim was not "fully and fairly" raised in part due to Const. VI ineffective assistance of hired counsel Bradly Hoyt's line of legal reasoning as well as his disregard of crucial legal issues which were "significant and obvious". Reasonable logic obligates the hired effective assistance of counsel to raise fundamental legal issues such as the requirement for the state witnesses to

attest to the state witness informant's veracity with a showing of "indicia of reliability" to support the "fair probability" in the state search warrant. The hired ineffective assistance in counsel's actions are contrary to law pursuant to *State v. Siegel,* 2021-Ohio-4208 *Id.; Franks v. Delaware,* 438 U.S. 154. Furthermore, although the state court appointed direct appeal counsel David Hoffmann was neglectful of his duty and refused to burn the midnight oil or work overtime and unethically eliminated the Const. IV search warrant claim from direct appeal, state court appointed appellate counsel David Hoffmann's legal statements in the "off the record" legal correspondence letters clearly points his legal blame at hired attorney Bradly Hoyt about the "veracity" by David Hoffmann stating in his legal letter that the filing #21 motion to suppress based on Franks filed by attorney Hoyt eventually presented "did not address this issue". The said legal statement by state court appointed appellate counsel David Hoffmann concentrates the legal accountability of hired attorney Hoyt as ineffective assistance of counsel. The state court appointed appellate counsel David Hoffmann's "expected" qualified and skilled legal statements specifies that hired attorney Bradly Hoyt was well-matched as Const. VI ineffective assistance of counsel thus the Const. IV claim was inflexibly handed off to be uniformly comprised and incorporated by Struckman in this P.C. claim C-200069 for review. However, the state appeal court never considered Struckman's outside evidence indicative of the Const. VI ineffective assistance of counsel claim in a "full and fair" hearing. State appeal court "unreasonably determined" to presume the warrant was not unreasonable. If the state appeals court would have completed a "full and fair" review of the entire record including attach. A-4 at T.p.20 they would have seen the facts in the record that, prove, entitle Struckman to relief. The state appeal court "unreasonable determination" in this state appeal C-200069

supposes that the warrant was not unreasonable and the warrant "veracity" errors would not have presented a reasonable probability of success had hired counsel Bradly Hoyt advanced it. The state appeals court determination is contrary to law pursuant to *Joshua v. DeWitt*, 341 F.3d 430 because "fully and fairly" contesting the "veracity" of the information in the search warrant now shows through reflection hired counsel performance was meaningless because hired ineffective assistance of counsel Bradly Hoyt never "fully and fairly" challenged the "veracity" which was a critical fault. Reasonable effective assistance of counsel Bradly Hoyt obligates his effective legal assistance to "fully and fairly" contest the "veracity" based on applicable law and facts of the case pursuant to *Lockhart v. Fretwell*, 506 U.S. 364,; *Powell v. Ala.* 287 U.S. 45 *Id.*; *Strickland v. Washington,* 466 U.S. 668 *Id.,* because had hired ineffective counsel Bradly Hoyt's deficient performance not "so undermined the proper functioning of the adversarial process the 2018 trial court could have had opportunity to reliably produce a just result." Therefore, the ineffective assistance of hired counsel Bradly Hoyt infringed on Struckman's VI Amendment right to "fully and fairly" raise the claim of "veracity" to search thereby violating Struckmans right to U.S. Const. IV, V, VI, XIV, search and seizure, fair trial, due process, right to counsel.

(4) <u>The defendant was denied equal protections and due process as guaranteed by the Ohio Constitution and the Constitution of the United States</u>.

The said evidence which was provided in the aforesaid assignments of error and argument fairly entitled petitioner to an evidentiary hearing at the state trial court level because the said attached evidence provided sufficient operative facts "<u>outside the record</u>" to support such a trial court evidentiary hearing request. Furthermore, the merit of the petition, records and files in this case fairly apprised sufficient operative facts to permit meaningful review at the <u>state</u>

appellate level in this state appeal C-200069, therefore this same "outside the record" evidence in this appeal apprised the same set of sufficient operative facts for the state trial court level to have taken responsibility for meaningful review on a state trial court level in an evidentiary hearing or in the least performed a "full and fair" meaningful state trial court adjudication. The said facts show the state trial court was unreasonable, arbitrary or unconscionable pursuant to *Blakemore v. Blakemore*, 5 Ohio St. 3d 217, 219, 5 Ohio B. 481, 450 N.E. 2d 1140 because the state trial court failed to acknowledge or properly act in response to the operative facts in evidence in the petition which is contrary to law pursuant to *State v. Ojile* 2017-Ohio-9319 *Id.* and R.C. 2953.21(E). In addition the state trial court is contrary to law pursuant to *State v. Strutton*, 62 Ohio app.3d 248, 251, 575 N.E. 2d 466 at [**468]; citing *State v. Jackson,* 64 Ohio St.2d 107,110,18 O.O.3d 348,413 N.E. 2d 819,822 because for the said reason that the state courts failed to require the state prosecution fully rebut the allegations but rather the state courts rebutted without ever holding the petitioner was entitled to a state trial court evidentiary hearing that action is contrary to law pursuant to *State v. Bays*, 1998 Ohio app. Lexis 226 at *5, citing *State v. Williams*, 8 Ohio app.2d 135, 136, 220 N.E. 2d 837. As a concluding point, in view of the fact that the state prosecution did not fully rebut the allegations in evidence at the state trial court level the state prosecutor surrendered their right to contend at further levels. Had not the state trial court ignored due process, equal protections, U.S. Const. V, XIV, the defendant would not have been prejudiced from a "full and fair fact-finding" opportunity in the state trial court level, appellant then would have been approved to establish a more comprehensive record at an evidentiary hearing.

(1) U.S. Constitution Amendment V, Reasonable Doubt, Fair Trial, Plain Error, Due Process, Double Jeopardy. U.S. Constitution Amendment XIV, Due Process, Fundamental Right, Equal Protections, Miscarriage of Justice, Brady v Maryland 373 u.s.83.

On July 19, 2021 Struckman filed a Petition to Vacate or Set Aside Judgment of Conviction or sentence in state trial court, on September 22, 2021 Struckman corrected the said state trial court filing. The petition was denied by the state trial court on Oct.21, 2021. Struckman appealed to ohio first district court of appeals generating state appeal C-210640 which resulted in dismissal on Aug.17, 2022. Attach. D, *State v. Struckman* 2022-Ohio-2848. The state bar is not independent and failed to determine whether federal const. error has been committed citing *Were v. Bobby*, 2024 U.S. Dist. Lexis 25782 *Id.*. The filed Petition to Vacate or Set Aside Judgment of Conviction or sentence state appeal C-210640 put forth a newly available const. factual predicate attach. J with accompanying evidence "outside the trial record" proving that "actual innocence" and reasonable doubt evidence that exists is now proven to be relevant. The state courts have collectively failed to "fully and fairly" review the newly available attach. J const. factual predicate with all the accompanying const. plain trial error evidence submitted with the said petition under the unavoidable-prevention standard pursuant to 2953.23(A)(1)(a) which required the state court to determine whether leave to file a new trial motion was warranted. Petitioner sustains jurisdiction with expounded Const. safeguards in the Traverse **Procedural Default Issues** section under **GROUND FOUR** claim C-210640 pages 6-17. Primarily, the state appeal court opinion in state appeal C-210640 was not impartial because it unreasonably failed to "fully and fairly" review the substantive const. grounds in the newly available attach. J factual predicate with its accompanying evidence in their operative fact finding opportunity similar to *Tumey v. Ohio*, 273 U.S. 510. The state appeals court is contrary to *State v. Ojile*, 2017-Ohio-9319 which required "the trial court must proceed to a prompt hearing on the issues, if the

petition, * and record show the petitioner is *** entitled to relief". The state appeals court is contrary to federal law by paying no attention to the need for a "full and fair" state trial court hearing pursuant to *Townsend v. Sain*, 372 U.S. 293, 312-313, therefore, for the principal reason that "there is no indication" Struckman was at fault before the state trial court proceedings concluded the "full and fair" hearing request was internally consistent and ought to have took place. On the other hand, there should have been an exception permitting an evidentiary hearing even if petitioner was at fault for failing to develop the factual predicate in state court pursuant to *Kyles v. Whitley*, 514 U.S. 419, 441, *State v. Brantley* 2021-Ohio-4621 *Id.,* because of the fact state prosecutor violations by their knowing reliance of officer jones false testimony allowed a level of prejudice pursuant to *Giglio v. United States* 405 U.S. 150 relying on *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217, the *Giglio* court sets forth the materiality standard for determining whether a new trial is required under *Brady v. Maryland*, 373 U.S. 83 *Id.*. The state appeals court is contrary to federal law pursuant to *State v. Brantley* 2021-Ohio-4621 at [*p8] and [*p9] citing *United States v. Agurs*, 427 U.S. 97,103,96 S.Ct. 2392, 49 L.Ed.2d 342 at 103, 104,107 for reliance on states witness officer jones false testimony while perpetuating a deceptive prosecution. The provided evidence attached to state appeal C-210640 has never received a "full and fair" hearing in state courts causing a miscarriage of justice citing *Murray v. Carrier* 477 U.S. 478, 495-496, specifically the state appeals court has undermined the presumption of innocence and "relevant facts". A "full and fair" review shows the 2018 state trial court in error stated on record that the provided evidence was not relevant by stating the issue of "res judicata" is "mooted", the state trial court is also in error by stating "this is the only opportunity they've had to show that they're your belongings" and "this is not

double jeopardy", see attach. G at T.p.89,497,515,516, the states required duty to a "full and fair" review of attach. F makes it apparent the state trial court, for reasons beyond petitioners control, never considered the "relevant facts" with res-judicata issues of the prior case (trial exhibit PG) pursuant to state law requirements in *State v. LoveJoy* 79 Ohio St. 3d 440; and also contrary to clearly-established federal law as determined by the U.S. Supreme Court because the state court was Const. required to apply principles of collateral estoppel in criminal cases if the protections of the double jeopardy clause have been triggered by a prior proceeding (2018 trial exhibit PG) citing *Lucas v. Hamilton County Mun. Court*, 2012 U.S. Dist. Lexis 76774 at [*21] and [*25], which the 2018 state court failed to notice, see attach. G at T.p.88-516, and the 2018 state trial court never considered the "relevant facts" with the assault incident attach. H in a "full and fair" hearing, see attachment G at T.p.769,771,780,781. The state trial courts said handling of the said (trial exhibit PG) res-judicata issues is a Const. plain trial error pursuant to *Arizona v. Fulminante* 499 U.S. 279 *Id.,* because it prevented the ascertainment of truth. Furthermore, the state prosecutor knows the government "may not knowingly use false evidence" of states witness officer jones or "allow it to go uncorrected when it appears." citing *Napue v. Illinois*, 360 U.S. 264 at 269 *Id.*. The state prosecutor knowledge that states witness officer jones testimony was false requires reversal citing *Drake v. Portuondo*,553 F.3d 230, at HN3. The state prosecutor's knowing failure to correct state witness officer jones exculpatory perjured testimony violates due process citing *Alcorta v. Texas*, 355 U.S. 28, 78 S.Ct.103. Additionally, a look at the state trial court jury instructions show Struckman was convicted under multiple theories of possession with a general verdict whereas is was not available for Struckman "an innocent person" to "clearly" determine the state prosecutions exact possession

theory arrangement or the trial court jury actual basis on which the general verdict rested pursuant to *Dowling v. United States* 493 U.S.342 at *358 because "it is usually difficult to determine the precise route of the jury's reasoning and the basis on which the verdict rest, citing *Ashe v. Swenson* 397 U.S. 444. Reasonably in 2018 Struckman could not be aware of the unavailable factual predicate grounds affirmed in attach. J judgement in the state direct appeal C-180287 until the grounds were made available on 3-31-20 whereas at that time attach. J was rendered in 2020 it produced the available factual predicate with the "basis for the jury's verdict in deliberations" which further "clarified relevant facts," plus specified the exact possession theory arrangement used by the state appeal court as the thirteenth juror. Before the factual predicate was available with clear generated grounds in attach. J at *p17, *p14 of the basis for the thirteenth juror verdict by the state appeal court affirmation which rendered state appeal C-180287 on 3-31-20 Struckman's guessing the basis for the unavailable 2018 state trial court jury deliberations could only compromise the factual predicate grounds with speculation of the basis for the 2018 trial jury's general verdict in deliberations. Unreasonably the state appeal court prevented petitioners attempt to bring the aforementioned attach. F and attach. H as being relevantly attributed evidence to the 2020 newly available factual predicate attach. J, using attach. J at *p17, *p14 as the application of "prima facie" 2020 newly available vital factual predicate evidence at the core of the relevant evidence. The state courts unreasonably refused to accept that before attach. J was made available in 2020 Struckman was not aware of the factual predicate grounds or the facts as evidence in attach. J because it was "impossible to determine" the exact grounds why the 2018 trial jury convicted and Struckman had no way to know beyond speculation the exact "basis" grounds for the general

verdict citing *Doherty v. American Motors Corp* 728 F.2d 334 at **30. It is "impossible to say" "basis for the verdict" "impossible to determine" pursuant to *Bachellar v. Maryland* 397 U.S. 564 *Id.* at Led HN4. It is "not easy to determine basis for the verdict" pursuant to *State v. Smallwood,* 1979 Ohio App. Lexis 11820 *Id.* at (*10). The aforesaid federal case law is qualified to clarify Struckman's resolution in the timeline of evidence availability and Struckmans unavoidable-prevention of awareness prior to 2020 of the unavailable factual predicate grounds in attach. J to support this C-210640 collateral filing and when in fact the U.S. Const. V, XIV factual predicate grounds could be proven in 2020. The state courts could not have reasonably compared the newly available factual predicate grounds in the 2020 determination attach. J at *p17, *p14 with any previously speculated findings of factual predicate grounds because the state courts for reasons beyond Struckman's control never considered the Const. claim or attached evidence in a "full and fair" hearing at the 2018 trial, or in any of the state direct appeal P.C. filings, otherwise the state courts would have seen the alleged facts that, prove, entitle Struckman to relief. "Diligence for purposes of the opening clause depends upon whether the prisoner made a reasonable attempt, in light of the information available at the time, to investigate and pursue claims in state court... "*Williams v. Taylor*, 529 U.S. 362, 420,435,146 L.Ed.2d 435, S.Ct 1479. In light of the "information available at the time," neither Struckman, nor state court appointed appellant counsel or any acquired legal advice had any way to anticipate awareness of the basis for the 2018 trial jury verdict in the 2018 trial court deliberations prior to attach. J being generated in 2020. In 2018 the state trial court was in error when it clearly stated the issues are not relevant "moot" see attach. G at T.p.89. With the exception to the resolution attach. J made available on 3-31-2020 which "at that said time" in

2020 made attach. H assault incident and attach. F the C/15/CRB/10112 transcripts "pertinent", relevant and material to "clarify relevant factual issues" which was disregarded at the 2018 trial, Struckman *Pro se* has diligently argued with all other parts of the trial record one would conceive as necessary to a resolution. Therefore the state trial court was clearly in error at the 2018 trial because the said issues of res-judicata from the municipal case are indeed relevant and not "moot", furthermore a fair minded jurist could not reasonably expect prisoner Struckman post-conviction *Pro se* to anticipate a new argument of relevance, two years into the seven year prison sentence or that the state prosecutors deceptive practice at the 2018 trial by use of multiple theories of prosecution which deceived the jury would have allowed the false accusations to go uncorrected all this time or that the state prosecutor would continue in misrepresenting speculative information since the 2018 trial in claiming that Struckman was living at the address. The state prosecutor has been aware well before the 2018 trial that state witness officer jones seen other suspects at the address for several months and knew of the assault injury on Struckman, and knew the "ultimate facts" had already been litigated in the prior municipal case proving Struckman was not living at the address. The fact is the state trial court disregarded and prevented "clarifying relevant facts" (trial exhibit PG) at the 2018 trial, see attach. G at T.p. 88-780. The state prosecutor withheld the facts at the 2018 trial and allowed an innocent man to go to prison. State prosecutor failure to correct state witness officer jones false testimony and their subsequent attempt to bolster credibility was improper and violated due process citing *Shih Wei v. Flion*, 335 F.3d 119,127-30. The state government "may not knowingly use false evidence" or "allow it to go uncorrected when it appears." citing *Napue v. Illinois*, 360 U.S. 264 *Id*. at 269. Attach. G at T.p.1254 shows the point on record at

which the state prosecutor knowingly bolstered states witness officer jones false testimonial evidence in violation of U.S. Const. V, XIV due process and in violation of a fair trial by stating "he had never see anybody else residing *** other than defendant". The state of ohio is aware the states witness officer jones false testimony contributes to the 2018 conviction which is a sufficient infringement upon the integrity of U.S Const. V, XIV and Struckman's right to due process, fair trial, and warrants a new trial pursuant to *Larrison v. United States*, 24 F.2d 82 (1928). *Brady v. Maryland*, 373 U.S. 83 *Id*. The evidence as a whole collectively proves actual innocence pursuant to *Schlup v. Delo,* 513 U.S. 298 *Id., Herrera v. Collins,* 506 U.S. 390 *Id.,* and a "miscarriage of justice" has occurred pursuant to *Wainwright v. Sykes,* 433 U.S. 72 *Id.*; *Murray v. Carrier*, 477 U.S. 478 *Id.*; *Edwards v. Carpenter,* 529 U.S. 446 *Id.*. Furthermore, "Conventional notions of finality of litigation have no place where life or liberty is at stake and infringement of constitutional rights is alleged" *Sanders v. United States* 373 U.S. 1 at p.8 and at p.1073. The grounds for relief in Struckman's petition raises a constitutional error, that case C/15/CRB/10112 transcripts attachment F contains omitted facts that "clarify relevant facts," that prove reasonable doubt exist, and the facts outlined, "establish by clear and convincing evidence" that Struckman is actually innocent and would not have been found guilty of unlawful possession of a dangerous ordnance with specification. The omitted facts in assault incident number 2016000004390 attachment H proves reasonable doubt exist, and the facts outlined would make clear the state withheld this evidence at the competency hearing and falsified knowing about the evidence at the 2018 trial in showing the issues were not "fully and fairly" adjudicated citing *Brady v. Maryland*, 373 U.S. 83 *Id*.. What is more the petitioner filed a 60(B) motion to vacate in the interest of justice which was dismissed by the state appeal

court on November 28, 2023 whereas the state appeal court "failed to reach the merits" and it asserted such a 60(B) motion filed in the state appellate court is not cognizable under the state appellate rules of procedure, citing App.R.1(A). The said state appellate dismissal is unreasonable because the state appellate rules language is vague and ambiguous as to the filing requirement specific to which level of state court the 60(B) is required to be filed, even so Civ.R.60(B)(5) catch-all provision may be invoked when needs of justice demand pursuant to *State v. Hill* 2023-Ohio-4486 at HN8. The state first appellate district court is a higher state court than the state trial court, therefore the state first appellate district which generated the fraudulent and misrepresentative judgement is the correct state court level whereas petitioner filed the 60(B) to vacate that said state appeal court judgment, it was only reasonable for petitioner to file the 60(B) motion to vacate the said state appeal court judgment at the proper state court level which made the judgment, furthermore state courts have allowed use of Civ.R.60(B) motion in criminal cases pursuant to *State v. Cottrill* 2007-Ohio-2006 at HN2. The lower state trial court was not the state appeal court that drafted the fraudulent judgement therefore presenting the state trial court with the said 60(B) motion would only create an inappropriate challenge. The aforesaid 60(B) motion intention is significant to "raise defect in integrity" in the state appeal courts C-210640 judgment, "such as fraud" pursuant to *Davis v. United States* 2018 U.S. App. Lexis 22999. The state first appellate district produced a judgment that contains fraudulent errant facts which are "unreasonable" pursuant to *McCarthy v. Pollard*, 656 F.3d 478 *Id.*, whereas, we review the district court's factual determinations for clear error, and we presume that the state court's factual determinations are correct unless the petitioner can demonstrate by clear and convincing evidence that they were unreasonable; *Sandoval v.*

United States, 574 F.3d 847, 850 (2009), whereas, we review the district court's denial of a petition for a writ of habeas corpus under 2255 *de novo* as to legal questions and for clear error as to factual questions. The attachment J and attachment H evidence demonstrates by clear and convincing evidence that they were unreasonable. In addition Struckman's Motion for 60(B) is justified for relief pursuant to 60(B)(5) because the state appeals courts judgment is incompatible with rudimentary demands of justice because it infringes on the integrity of the United States Const. V, X, XIV, separation of powers, due process, equal protections, and Const. plain error, whereas the state appeal court was made aware with attachment F and attachment H evidence that the state prosecution was knowingly using fraud on the court with the state prosecutor violations withholding reasonable doubt and actual innocence facts in evidence and by their knowing reliance of state witness officer jones false testimony which had allowed a level of prejudice pursuant to *Giglio v. United States* 405 U.S. 150 relying on *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959). The *Giglio* court sets forth the materiality standard for determining whether a new trial is required under *Brady v. Maryland*, 373 U.S. 83 *Id.*. The state is contrary to law pursuant to *State v. Brantley* 2021-Ohio-4621 at [*p8] and [*p9] citing *United States v. Agurs*, 427 U.S. 97,103, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976) at 103, 104, 107. The provided attachment J, attachment F, and attachment H evidence has never received a "full and fair" hearing in state court causing a "miscarriage of justice" pursuant to *Wainwright v. Sykes,* 433 U.S. 72 *Id.*; *Murray v. Carrier*, 477 U.S. 478 *Id.*; *Edwards v. Carpenter,* 529 U.S. 446 *Id.*. The state prosecutor fraud on the state appeal court has led to fraud by the state appeal court pursuant to *McNamara v. Am. Skandia Life Assur. Corp*, 2004 U.S. Dist. Lexis 29179, *Id.*.

CONCLUSION

While the state argues that evidence "overwhelmingly" proved that Struckman was guilty, we can be certain that the state prosecution would propose to boundlessly carry on refuting Struckmans U.S. Constitutional right to present a "full and fair" defense again at a new trial, and once again the state prosecution would hold back "clarifying relevant facts," that prove reasonable doubt exist, and the facts outlined would, "establish by clear and convincing evidence" that Struckman is actually innocent and would not have been found guilty of unlawful possession of a dangerous ordnance with specification.

Plainly, the state prosecutor's case would not be possible to be a success at a new trial without again infringing upon the United States Constitution. If a fair trial was to be given the jury would be firmly aware of state witness officer jones false testimony and of officer jones failure to act when Struckman was attacked and injured and the trial court jury would also be made aware with photo evidence of the multiple suspects residing in the house in which marijuana and dangerous ordnance were found and the ultimate fact has already been litigated in the prior related case that Struckman did not live in the house. That is what a U.S. Constitution V, XIV fair trial which includes the right to present a defense should have looked like.

For the foregoing reasons, Petitioner Struckman asks this Federal Court to issue the Writ, vacating the convictions and sentences, and order that Struckman be afforded a "fair" new trial within one-hundred and twenty (120) days, or be immediately at liberty from any/all collateral consequences. Respectfully submitted this ____ day of _____.

_____

Buddy Struckman, Petitioner, *pro se*

INDEX OF ATTACHMENTS

A 26(B) opinion Entry Denying 26(B) Application for Reopening Feb 03, 2021

A-1 S.Ct. 26(B) leave denial by clerk

A-2 O.D.R.C. Quarantine

A-3 S.Ct. Covid Order

A-4 Motion to Suppress, (officer sublet testimony) Suppression Hearing Transcripts

A-5 Exhibit list showing exhibit PG 10112 acquittal entry

A-6 26(B) four letters to counsel filed 4-29-19, 6-24-19, 8-21-19, 1-29-19.

A-7 Docket Summary

A-8 Letter of notification to Hamilton Co. clerk

A-9 Public records request about transferees pertaining to M-10

B C-200210, C-200069 opinion March 31, 2021 *State v. Struckman,* 2021-Ohio-1043

C C-220658 opinion October 04,2023 *State v. Struckman,* 2023-Ohio-3582

D C-210640 opinion August 17, 2022 *State v. Struckman,* 2022-Ohio-2848

E Affidavit administered on 4-20-15 showing nexus between cases

F C/15/CRB/10112 acquittal transcripts

G B1502231 transcripts

H Assault Incident number 2016000004390

J C-180287 opinion First Appellate District OPINION March 31, 2020
State v. Struckman, 2020 Ohio app. Lexis 1187

VERIFICATION OF AUTHENTICITY OF ATTACHMENTS

I hereby swear and affirm, under penalty of perjury, that the documents listed as Attachments A through J are true, authentic and accurate copies of the original Exhibits entered into evidence, and the photographs have been truly, authentically and accurately reproduced without altering the originals.

So sworn this _____ day of _____, 20_____.

_____
Signature

Buddy Struckman
R.C.I. P.O. Box 8107,
1001 Olivesburg Rd.
Mansfield, Ohio 44905

NOTORIZED CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this ____day of _____, _____, I served a true and correct copy of the foregoing: *Petitioner's Traverse* with *Attachments* under cause number 1:20-cv-737 upon:

Ohio Attorney General Office
Attn: Criminal Justice Section
30 E. Broad Street, 23rd Floor
Columbus, Ohio 43215

by submitting same to a designated civilian employee of the Ohio Department of Rehabilitation & Corrections for prompt processing and mailing by authorized prison personnel within the facility mailroom, with sufficient first class postage affixed, and it shall be deemed FILED as of the above date, per the federal "prison mailbox rule" *Houston v. Lack*, 487 U.S. 266, 275-276,108 S.Ct. 2379,101 L.Ed.2d 245 (1988).

_____
Signature
Buddy Struckman
R.C.I. P.O. Box 8107,
1001 Olivesburg Rd.
Mansfield, Ohio 44905

STATE OF OHIO)
) SS: **NOTORIZATION**
COUNTY OF RICHLAND)

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the above State and County, on this _____, day of _____, 2024.

_____
Notary-Printed Name:

_____
County of Residence:

_____
Notary-Signature:

_____
My Commission Expires:

NOTORIZED CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this ____day of _____, _____, I served a true and correct copy of the foregoing: *Petitioner's Traverse* with *Attachments* under cause number 1:20-cv-737 upon:

U.S. District Court, Southern District of Ohio
Attn: Office of the Clerk
100 East Fifth Street, Room 103
Cincinnati, Ohio 45202

by submitting same to a designated civilian employee of the Ohio Department of Rehabilitation & Corrections for prompt processing and mailing by authorized prison personnel within the facility mailroom, with sufficient first class postage affixed, and it shall be deemed FILED as of the above date, per the federal "prison mailbox rule" *Houston v. Lack*, 487 U.S. 266, 275-276,108 S.Ct. 2379,101 L.Ed.2d 245 (1988).

_____
Signature
Buddy Struckman
R.C.I. P.O. Box 8107,
1001 Olivesburg Rd.
Mansfield, Ohio 44905

STATE OF OHIO)
) SS: **NOTORIZATION**
COUNTY OF RICHLAND)

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the above State and County, on this _____, day of _____, 2024.

_____
Notary-Printed Name:

_____
County of Residence:

_____
Notary-Signature:

_____
My Commission Expires: